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CHARLES ELMORE CROPLEY
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1937.

No. 230

NATURAL GAS PIPELINE COMPANY OF AMERICA,
A CORPORATION,
Appellant,

vs.

JAMES M. SLATTERY, ANDREW OLSON, CHARLES E. BYRNE, JAMES D. MARNANE AND HARRY A. BARR, THE PERSONS CONSTITUTING THE ILLINOIS COMMERCE COMMISSION OF THE STATE OF ILLINOIS, AND OTTO KERNER, ATTORNEY GENERAL OF THE STATE OF ILLINOIS,
Appellees.

BRIEF OF APPELLANT IN OPPOSITION TO APPELLEES' MOTION TO DISMISS.

WILLIAM P. SIDLEY,
J. J. HEDRICK,
DONALD F. MCPHERSON,
HOWARD NEITZERT,
Counsel for Appellant.

THE GUNTHORP-WARREN PRINTING COMPANY, 210 WEST JACKSON, CHICAGO

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NATURAL GAS PIPELINE COMPANY OF AMERICA, a corporation,

Appellant,

vs.

JAMES M. SLATTERY, ANDREW OLSON, CHARLES E. BYRNE, JAMES D. MARNANE and HARRY A. BARR, the persons constituting the Illinois Commerce Commission of the State of Illinois, and OTTO KERNER, Attorney General of the State of Illinois,

Appellees.

BRIEF OF APPELLANT IN OPPOSITION TO APPELLEES' MOTION TO DISMISS.

Appellees have filed a motion to dismiss the appeal. While Appellant believes the motion to be without merit, this short brief in opposition is filed pursuant to Paragraph 3 of Rule 7.

THE COURT HAS JURISDICTION OF THIS APPEAL.

This appeal is from an order of a three judge statutory court organized pursuant to Section 266 of the Federal Judicial Code, sitting in the United States District Court for the Northern District of Illinois, Eastern Division. The order complained of was one denying an interlocutory in-

junction against the enforcement of an order of the Illinois Commerce Commission, extending its jurisdiction over the rates and business affairs of Appellant, which is a company engaged in national interstate commerce, namely, the transportation of natural gas from the Panhandle of Texas through various states to Illinois. Appellant is a Delaware corporation, not qualified to do business in Illinois, is not a public utility, enjoys no franchise or other privileges from the State of Illinois or any governmental subdivision thereof, and is not subject to the jurisdiction of the Illinois Commerce Commission.

The discretion of this court as to whether or not a review will be granted, as in the case of petitions for writs of *certiorari,* is not here involved. Section 266 of the Judicial Code (28 U. S. C. A. 380) provides in part as follows:

> "An appeal may be taken direct to the Supreme Court of the United States from the order granting or denying, after notice and hearing, an interlocutory injunction in such case."

This Court on numerous occasions has held that it has jurisdiction of a direct appeal from an order of a three judge court such as the one here complained of.

Clark v. *Poor,* 274 U. S. 554, 71 L. Ed. 1199.
Colorado v. *Toll,* 268 U. S. 228, 69 L. Ed. 927.
Arkadelphia Milling Co. v. *St. Louis Southwestern R. Co.,* 249 U. S. 134, 63 L. Ed. 517.
Ex parte Buder, 271 U. S. 461, 70 L. Ed. 1036.

A DIRECT APPEAL TO THIS COURT IS PERMITTED UNDER SECTION 266 OF THE FEDERAL JUDICIAL CODE IN CASES IN WHICH THE CONSTITUTIONALITY OF A STATE STATUTE IS INVOLVED.

Appellant contended before the three judge court that Section 8a of the Illinois statute entitled, "An Act Concerning Public Utilities," in force July 1, 1921, as amended, (Chapter 111-A, Illinois Revised Statutes 1935, Section

23 (1)) is violative of the United States Constitution. Consequently a three judge court was necessary and a direct appeal to this Court lies from the order of that Court as a matter of statutory right to the Appellant.

Conclusion.

Appellant has properly perfected its appeal and in accordance with provisions of Paragraph 1 of Rule 12, in its "Statement as to Jurisdiction" has indicated those respects in which Appellant believes the three judge court to have abused its discretion in denying the motion for an interlocutory injunction. An Associate Justice of this Court has painstakingly examined the record, has heard arguments of counsel for both Appellant and Appellees, has read their briefs, and has granted Appellant's motion for an injunction to maintain the status quo by enjoining the enforcement of the order of the Illinois Commerce Commission of March 3, 1937, above mentioned, until the determination of this appeal by this Court.

Appellees' motion to dismiss is without substance and should be overruled.

Respectfully submitted,

Natural Gas Pipeline Company of America,
Appellant.

By William P. Sidley,
J. J. Hedrick,
Donald F. McPherson,
Howard Neitzert,
Its Attorneys.

Chicago, Illinois,
August 12, 1937.